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October 30, 2008

Ravalli County Commissioners

To: The County Commissioners  
in Missoula and Ravalli Counties.

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I enclose a question and answer sheet I would like to have you examine. I have no legal authority to ask you to do this except that for the last 50 years I have paid that rural fire district tax.

During this summer the Missoula rural fire district had an election and mailed out about fifteen thousand ballots. 64% return showed the tax request of 38 Mills on top of the 2007 levy of the 91.130 mills was turned down. With times like they are it is understandable. But to me it is more important that it got taxpayers asking questions about the rural fire districts. One of the questions is in the enclosed sheet.

I have some knowledge about this matter. December, 1958 was my last month as Ravalli County Attorney. The next year I was a District Judge. You and the County Attorney can look at this problem and say --it is the fault of the State and the Attorney General should fix it. It is not fair to close fire protection in only my county. The mistake is that the Legislature put the exact same tax levy back in the Code just a couple of months after the Supreme Court declared it unconstitutional. So for the past 50 years all commissioners have made the tax levy. Does that make it legal?

I am a retired District Judge. I could be called back to serve on a case where you are charged with that crime. Your response could be that it is only a technical crime. You are doing what the people want. A judge cannot accept that, a crime is as crime. Next you can say but the Legislature said we could make the tax levy. A judge would be required to instruct the jury on the law. The law is that only the Supreme Court can declare a law unconstitutional and if that is done no other branch of the government can refuse to follow what the Supreme Court has said. I am sure a jury would convict.

Now I think you making the tax levy is a poor example. Fixing the problem can only be done by the Legislature. You know how to start that and it seems best if that is done before some group of taxpayers take whatever action they might take.

Sure it would take some effort on your part. Most commissioners I know always felt the constitution was important. They feel everyone must obey it. Some people go to jail for stealing a few dollars.

You have a thankless job, I hate to add to your worries.

E. G. Brownlee  
17474 US Highway 93 N  
Florence, MT 59833-6026

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**IS IT A CRIME FOR COUNTY COMMISSIONERS  
TO MAKE A TAX LEVY AFTER THE SUPREME COURT  
HAS DECLARED THE LEVY UNCONSTITUTIONAL?**

**ANSWER. Yes -**

**BUT, -- Why is that not true when a tax levy is made under section 7-33-2109?**

**ANSWER. Because in December of 1958 the Supreme Court declared the tax levy for a rural fire district unconstitutional . A violation of this clause in both the Montana and United States constitutions. “ NO PERSONS SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.” Then the Legislature in early 1959 put the identical tax levy back in the Montana Code.**

**BUT, Under our constitution only the Supreme Court has power to declare a tax levy unconstitutional. Is that not true?**

**ANSWER. Yes, but the Legislature must believe otherwise. Since 1959 they have put the identical tax levy in an amendment in 1963,1969,1977,1991,1995,1999, 2001 and 2007. . It seems they have challenged the other two branches of our government to prove otherwise.**

**WHAT HAS HAPPENED ?**

**ANSWER. Nothing on the part of the Supreme Court but the Executive branch of our government seems to agree with the Legislature. Every County Commissioner could refuse to make the tax levy based on the 1958 Supreme Court ruling but they do not.**

**WHAT DO WE DO NOW?**

**ANSWER. Wait until the Legislature does something to show they believe in the constitution of both Montana and the United States.**

**WHAT CAN THE LEGISLATURE DO?**

**ANSWER. They could repeal the tax levy and leave all rural fire districts without any tax help for fire protection. Or they could amend the statute to provide the DUE PROCESS OF LAW required by the constitutions.**

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IN WITNESS WHEREOF I HAVE HEREUNTO SIGNED  
THIS 15TH DAY OF SEPTEMBER 1964

WATER-PROOFING